

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

DONYALL E. WHITE-BEY,)
vs.)
Petitioner,)
SUPERINTENDENT, Correctional) No. 1:13-cv-01026-TWP-DKL
Industrial Facility,)
Respondent.)

Entry Discussing Motion for Relief from Judgment

Final judgment was entered in this action for habeas corpus relief on February 3, 2014. The petitioner's appeal was docketed as No. 14-1429 and was dismissed on June 26, 2014 when the Court of Appeals denied a certificate of appealability.

On November 26, 2014 the clerk received and filed the petitioner's motion for relief from judgment. The gist of the motion for relief from judgment is that this court misapplied the law in denying habeas relief without reaching the merits of his claims. The motion for relief from judgment is ostensibly filed pursuant to Rule 60(b) of the *Federal Rules of Civil Procedure*. However, the motion is a challenge to the same underlying proceedings as was the petition for writ of habeas corpus and pursuant to the rule in *Gonzalez v. Crosby*, 545 U.S. 524, 532 (2005), must be treated as a new action. The petitioner mentions *Gonzalez* but confuses the result in that case with the rule laid down.

The motion for relief from judgment [dkt 22] is therefore **denied**.

The clerk shall **open a new civil action** in the Indianapolis Division. The new action shall have a NOS of 530 and a cause of action of 28:2254(a). In the new action Donyall W. White-Bey shall be the petitioner and the Superintendent of the Correctional Industrial Facility shall be the respondent. The motion for relief from judgment shall be **re-docketed in the new action** as the petition for writ of habeas corpus and a copy of this Entry shall likewise be docketed in the new action. The assignment of judicial officers in the newly-opened action shall be by random draw. Although counsel appeared for the respondent in this action, that appearance does not automatically extend to the newly opened action.

IT IS SO ORDERED.

Date: 12/10/2014

Tanya Walton Pratt
Hon. Tanya Walton Pratt, Judge
United States District Court
Southern District of Indiana

Distribution:

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